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*Attorneys for Plaintiffs*

**UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA**

CHASOM BROWN, WILLIAM BYATT,  
 JEREMY DAVIS, CHRISTOPHER  
 CASTILLO, and MONIQUE TRUJILLO  
 individually and on behalf of all similarly  
 situated,

Plaintiffs,

vs.

GOOGLE LLC,

Defendant.

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 Shawn J. Rabin (admitted *pro hac vice*)  
 Steven M. Shepard (admitted *pro hac vice*)  
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Case No.: 5:20-cv-03664-LHK-SVK

**PLAINTIFFS' OPPOSITION TO  
 GOOGLE LLC'S ADMINISTRATIVE  
 MOTION TO ENLARGE TIME TO FILE  
 ANSWER TO SECOND AMENDED  
 COMPLAINT**

## **INTRODUCTION**

Plaintiffs would normally agree to this sort of extension, but Google’s current request for an extension is unnecessary and highly prejudicial to Plaintiffs. It is unnecessary because Plaintiffs filed their Second Amended Complaint (“SAC”) in April of last year, following the Court’s denial of Google’s Motion to Dismiss the First Amended Complaint. Google therefore had almost ten months to prepare an answer that it knew would need to be filed. It is prejudicial because fact discovery is currently set to close on January 21, and Google has not yet filed any answer or otherwise identified any affirmative defense Google intends to assert. Any extension now, at this late stage, will unfairly benefit Google and prejudice Plaintiffs. This prejudice to Plaintiffs exists because Google previously refused to identify any affirmative defense it intends to assert and also because, on the same day that Google filed this motion, Google’s counsel rejected Plaintiffs’ request to extend certain case deadlines—necessitating Plaintiffs’ Motion for Relief from Case Management Schedule. *See* Dkt. 371. Google’s efforts to create deadlines that benefit Google and prejudice Plaintiffs should not be rewarded, and Plaintiffs respectfully request that the Court deny Google’s administrative motion.

## **STATEMENT OF RELEVANT FACTS**

The January 5 deadline applies to Plaintiffs’ Second Amended Complaint (“SAC”), which Plaintiffs filed over eight months ago—on April 14, 2021. Dkt. 136. Plaintiffs’ SAC included many of the same allegations as Plaintiffs’ First Amended Complaint (“FAC”), filed on September 21, 2020. Dkt. 68. On March 12, 2021, the Court denied Google’s motion to dismiss the FAC (Dkt. 113), and Google has therefore had many months to identify any affirmative defenses and prepare its answer.

Google has not yet filed any answer or identified any affirmative defense that it intends to assert. Mindful of the January 21, 2022 discovery cutoff, in the summer of 2021, Plaintiffs asked Google to identify any affirmative defenses that Google planned to assert based on the claims that already proceeded past a motion to dismiss, so that Plaintiffs could take appropriate discovery. Dkt. 371-1 ¶ 36. Google refused to do that. Dkt. 371-1 ¶ 36. Google has also refused to stipulate

1 to Plaintiffs’ proposed extension of other deadlines in this case that would permit Plaintiffs  
 2 additional time to complete discovery, requiring Plaintiffs to file their own motion to extend those  
 3 deadlines. Dkt. 371.

## 4 **ARGUMENT**

### 5 **I. Legal Standard**

6 To obtain an extension of the January 5 deadline to file an answer, Google has the burden  
 7 to: (1) set forth with particularity the reasons for the requested enlargement of time; (2) describe  
 8 efforts to obtain a stipulation to the time change; (3) identify the substantial harm or prejudice that  
 9 would occur if the Court did not change the time; (4) disclose all previous time modifications in  
 10 the case; and (5) describe the effect of the requested time modification on the schedule for the case.  
 11 Civ. L.R. 6-3.

### 12 **II. Plaintiffs, Not Google, Will Suffer Substantial Harm or Prejudice**

#### 13 **A. Google Had Since March 2021 to Draft its Answer**

14 The factual allegations supporting Plaintiffs’ case have remained the same since September  
 15 2020, and Google has known since at least March 12, 2021 that it would need to respond to those  
 16 factual allegations and at least five causes of action. Dkt. 113. The only change between the FAC  
 17 and SAC that could impact Google’s answer or affirmative defenses is the additional two causes  
 18 of action, which the Court declined to dismiss. Dkt. 363. Google’s motion and the supporting  
 19 declaration are devoid of explaining Google’s diligence over the past 9.5 months to draft an answer  
 20 and affirmative defenses to the SAC. Instead, Google summarily represents that “[b]ecause the  
 21 Court’s Order (Dkt. 363) came down prior to the year-end holidays, Google’s in-house and outside  
 22 counsel’s availability to prepare the Answer has been limited.” Dkt. 372-1 ¶ 7. But Google has  
 23 almost 10 months to draft the answer, not just the holidays.

#### 24 **B. An Extension Prejudices Plaintiffs**

25 Contrary to Google’s declaration, Dkt. 372-1 ¶ 10, an extension of Google’s time to file  
 26 the answer will very clearly prejudice Plaintiffs, where Plaintiffs told Google: “with discovery  
 27 deadlines approaching we will need Google to answer promptly so that we can proceed with any  
 28

1 necessary discovery that may result.” Declaration of James W. Lee (“Lee Decl.”) ¶¶ 4–8. Plaintiffs  
 2 anticipated this issue last summer, so they asked Google to send a list of any affirmative defenses  
 3 that Google anticipates raising, but Google refused. Dkt. 371-1 ¶ 36. Although discovery is just 18  
 4 days from closing, Google still has not provided any information regarding its answer or any  
 5 affirmative defenses Google intends to assert in this action.

6 With Google’s proposed extension, Plaintiffs would be left with just over a week to digest  
 7 Google’s answer and any affirmative defenses, adjust any remaining deposition outlines  
 8 accordingly, and take any discovery. This will further prejudice Plaintiffs. Plaintiffs have already  
 9 defended the deposition of one of the named class representatives without the benefit of Google’s  
 10 answer and affirmative defenses, and the depositions of at least two more class representatives  
 11 would occur between when Google’s answer and affirmative defenses would be due (January 5)  
 12 and when Google requests an extension (January 15, which falls on a Saturday). Lee Decl. ¶ 9.  
 13 Another named plaintiff is scheduled for deposition on January 17 (the following Monday). Lee  
 14 Decl. ¶ 9. Additional depositions of current and former Google employees are currently scheduled  
 15 before Google’s answer would be due if the extension was granted. Lee Decl. ¶ 10. Google’s  
 16 proposed extension of time only serves to disadvantage Plaintiffs, and is solely attributed to  
 17 Google’s inaction.

### 18 CONCLUSION

19 Google’s failure to act diligently and prepare its answer and affirmative defenses is solely  
 20 attributable to Google, and Plaintiffs should not be further prejudiced by Google’s request for  
 21 further delay. Plaintiffs respectfully request the Court deny Google’s motion.

22 Dated: January 3, 2022

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